

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
12 CVS 03029

THE INSTITUTE FOR SOUTHERN
STUDIES, INC. d/b/a CAROLINA PUBLIC
PRESS; GANNETT PACIFIC
CORPORATION d/b/a ASHEVILLE
CITIZEN-TIMES; GREEN LINE MEDIA,
INC. d/b/a MOUNTAIN XPRESS;
WESTERN NORTH CAROLINA PUBLIC
RADIO, INC. d/b/a WCQS; and SINCLAIR
BROADCAST GROUP, INC. d/b/a WLOS-
TV,

Plaintiffs,

v.

CITY OF ASHEVILLE and BUNCOMBE
COUNTY DISTRICT ATTORNEY'S
OFFICE,

Defendants.

AFFIDVAIT OF JON ELLISTON

Jon Elliston, being first duly sworn, deposes and says:

1. My name is Jon Ellison. I am over eighteen (18) years of age and am otherwise competent to make this Affidavit based on personal knowledge.
2. I am the Investigations and Open Government Editor of the Carolina Public Press, a nonprofit media project sponsored by Plaintiff The Institute for Southern Studies, Inc., and this Affidavit is submitted in further support of Plaintiffs' Verified Complaint and Application For Order Compelling Disclosure of Public Records.
3. Defendant City of Asheville ("Asheville") has a history of furnishing copies of evidence-room audits in response to public-records requests, with the exception of the report at issue in this case.

4. In particular, Asheville has provided the Asheville Police Department's ("APD's") five most recent evidence-room inspection reports, dating from June 2011 to April 2012, in response to public-records requests from Carolina Public Press and other media outlets in July 2012.

5. Previously, Asheville provided 15 internal APD evidence-room inspection reports, dating from August 2008 to December 2010, in response to a public-records request by Plaintiffs Asheville Citizen-Times in April 2011.

6. To my knowledge, the only recent evidence-room inspection report not furnished in response to a public-records request is the report at issue in this case.

7. I attended a July 24, 2012, meeting of the Asheville City Council (the "Council"). I prepared a recording of the portion of the meeting relevant to the matters at issue in this case. At that meeting, the Council heard a presentation by Mike Wright, who is the manager of Blueline, the vendor who conducted the evidence-room inspection at issue on Asheville's behalf.

8. Mr. Wright briefed the Council on his firm's findings. In his presentation, Wright described the APD evidence room as being in deep disarray, with thousands of items either missing or uncatalogued, a situation Mayor Terry Bellamy described during the meeting as "horrendous." She also added during that meeting: "I think we're in a situation where we have got to restore the public's trust."

9. Mr. Wright told the Council that the report contains "many detailed and specific recommendations," and he listed several during the meeting of particular concern to the Council, including the following:

- a. "The existing paper filing system is not consistent from year to year, and the files need to be organized, resorted, analyzed and verified."

- b. "An aggressive and continuous purging program must be implemented to get the inventory of the facility under control and to prevent the inventory from outgrowing the storage capacity."
- c. "Since items of critical importance were found throughout the facility, the entire facility must be scanned and searched in order to definitely state that an item is missing."
- d. "The evidence from the new evidence facility cannot be combined with the evidence from the existing facility until sufficient purging has occurred to allow the new evidence to be stored separately and until such time as the district attorney and SBI have reviewed the facility and approved the plan to combine the facilities."
- e. "The city (should) employ a staff of four persons and preferably six persons dedicated to restoring the old property room to proper order."
- f. "To prevent a recurrence of any of the problems which have plagued the old property room, Council should see that the Police Department has adequate staff, resources and facilities to operate the new property room in accordance with nationally accepted standards. The recommended staffing level for the new evidence room is four to six persons."
- g. "All property and evidence staff should receive specialized training in property and evidence management and in the software."

10. During his presentation, Mr. Wright gave no indication that the audit report discusses or addresses any alleged crimes that may have occurred in connection with the APD evidence room, nor did he indicate that the report identifies or discusses any persons suspected of

criminal activity. Mr. Wright's presentation suggests that the report contains an inventory of approximately 75% of the evidence room and a series of recommendations. As noted above, Mr. Wright described a number of those recommendations publicly during the July 24, 2012, Council meeting.

11. Asheville's new chief of police, William Anderson, explained at the same meeting that it was important that his department have access to the audit report.

12. Thereafter, the Council directed City Attorney Bob Oast to request any evidence-room recommendations stemming from the audit from Defendant Buncombe County District Attorney Ron Moore.

13. On July 26, 2012, Oast wrote to District Attorney Moore to request such recommendations, in a letter obtained by Carolina Public Press with a public-records request. (Exhibit A hereto)

14. In recent e-mail correspondence obtained by Carolina Public Press through a public-records request, city officials and elected representatives discussed pursuing a release of the audit in accordance with the terms for the contract between Asheville and Blueline.

15. On July 25, 2012, in a message to fellow Council members, City Manager Gary Jackson and City Attorney Bob Oast, Council member Gordon Smith wrote, in part: "Upon reviewing the contract with Blueline, I came upon the clause in section A(15) that indicates a redacted copy of the audit is required to be released to the City in the event the contents are sensitive. It seems we are contractually entitled to receive the redacted copy." (Exhibit B hereto) (This email and others were provided by the City in an electronic form that, when opened in a standard word processing program, introduced substantial formatting errors. For convenience, I have used my best efforts to correct the formatting and remove the stray characters and symbols

in the attachments, which render those documents difficult to read in their original form as produced by the City. In doing so, I have not altered the substance of the emails.)

16. On July 26, 2012, Smith sent another email to the same parties. He wrote, in part: “We signed a legal contract with the company that calls for the release of a redacted copy in the event that the entire audit could not be released. It’s my opinion that we ought to execute the contract as we agreed. Otherwise we are abandoning the level of transparency available to us per the terms.” (Exhibit C hereto) In the same message, Smith went on to quote this passage from the contract: “Contractor, in consultation with the District Attorney, shall redact or remove from the final report such confidential information and provide the City with a copy of the remaining information contained in the final report.” Smith added: “Per the terms of the contract everyone agreed to, the redacted version shall be made available,” Smith wrote. “That looks pretty straightforward to me.”

17. On July 27, Smith asked Oast about the matter in a separate email: “You may have seen that I’m interested in pursuing a redacted version of the evidence room report audit report.” (Exhibit D hereto) Smith wrote: “It stipulates in the contract that the city signed with BlueLine that we ‘shall’ receive a redacted version if the entire report can’t be released for some reason. It seems to me that it’s our responsibility to fulfill the terms of the contract. Your thoughts?”

18. On July 28, 2012, Oast wrote to Smith, stating: “I plan to speak with Ron Moore about that as we respond to the lawsuit.” (Exhibit E hereto)

FURTHER THE AFFIANT SAYETH NOT.

Witness my hand this 21st day of August, 2012.


JON ELLISTON

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

I, a Notary Public of the County and State aforesaid, certify that Jon Elliston, personally appeared before me this day and either (i) being personally known to me; or (ii) having provided satisfactory evidence in the form of :

(circle one)

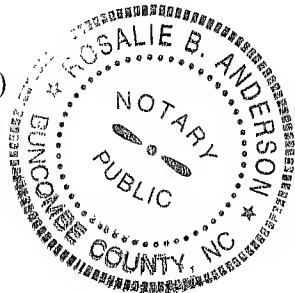
- (a) state issued driver's license;
- (b) state issued identification card; or
- ☒ (c) United States Passport

acknowledged to me that he/she voluntarily signed the foregoing instrument for the purpose stated therein as Investigations and Open Government Editor of the Carolina Public Press, under authority duly given, on this the 21st day of August, 2012.

Notary Public 

My Commission Expires: 11-29-2014

(SEAL)



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **AFFIDAVIT** was served upon all parties by facsimile and by depositing a copy thereof in the United States Mail, postage prepaid, and addressed as follows:

BUNCOMBE COUNTY DISTRICT
ATTORNEY'S OFFICE
c/o Ronald L. Moore, District Attorney
Twenty-Eight Prosecutorial District
P.O. Box 7158
Asheville, NC 28802
Fax: 828-259-3411

CITY OF ASHEVILLE
c/o Robert W. Oast, Jr., City Attorney
Office of the City Attorney
P.O. Box 7148
Asheville, NC 28802
Fax: 828-259-5475

This the 22nd day of August, 2012.



Charles E. Coble



City of Asheville
Office of the City Attorney

P.O. Box 7148
Asheville, NC 28802
828-259-5610
fax: 828-259-5475
www.ashevillenc.gov

July 26, 2012

Via Hand-Delivery

The Honorable Ronald L. Moore
District Attorney
Buncombe County Courthouse
60 Court Plaza
Asheville, NC 28801

Re: Evidence Room Audit Recommendation

Dear Mr. Moore:

As you know, Blue Line Services has conducted an audit of the evidence room that is maintained by the Asheville Police Department. This audit was performed at the direction of your office following the discovery last year that some evidence in open criminal matters had been tampered with or could not be properly accounted for.

At its meeting on July 24, the Asheville City Council heard a presentation from Mr. Mike Wright of Blue Line wherein he outlined the general findings of the audit. Mr. Wright said that his audit report, which has been submitted to you, contains some recommendations and suggestions for how the evidence room operation may be better managed in the future, and suggested that the Police Department work with the District Attorney's office to formulate and implement appropriate policies and procedures for the operation of the evidence room.

At your convenience, we would appreciate receiving any suggestions or direction regarding the management of the evidence room, so that we can better assist your office in the administration of the criminal justice system in Buncombe County.

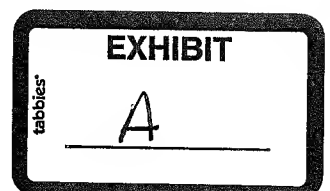
We look forward to hearing from you and working with you on this important matter.

Sincerely,

Robert W. Oast, Jr.
City Attorney

RWOjr/sc

cc: Mayor and City Council
Gary W. Jackson, City Manager
Chief William Anderson, Asheville Police Department
Kelly Whitlock, Assistant City Attorney



Date: Wed, 25 Jul 2012 15:06:28

Subject: Audit Contract

From: Gordon Smith <gordonsmith@avlcouncil.com>

To: Gary Jackson <GJackson@ashevillenc.gov>, councilgroup
<AshevilleNCCouncil@ashevillenc.gov>, Bob Oast <boast@ashevillenc.gov>

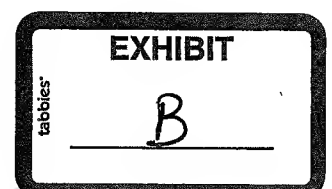
Mayor, Council, Mr. Jackson, Mr. Oast,

Upon reviewing the contract with BlueLine, I came upon the clause in section A(15) that indicates a redacted copy of the audit is required to be released to the City in the event the contents are sensitive.

It seems we are contractually entitled to receive the redacted copy.

Thoughts?

Gordon



Date: Thu, 26 Jul 2012 16:57:51

Subject: Re: Audit Contract

From: Gordon Smith <gordonsmith@avlcouncil.com>

To: Cecil Bothwell <cecil@braveulysses.com>

Cc: Gary Jackson <GJackson@ashevillenc.gov>, councilgroup
<AshevilleNCCouncil@ashevillenc.gov>, Bob Oast <boast@ashevillenc.gov>

We signed a legal contract with the company that calls for the release of a redacted copy in the event that the entire audit could not be released. It's my opinion that we ought to execute the contract as we agreed. Otherwise we are abandoning the level of transparency available to us per the terms. I don't know if the information will be useful or not, but the contract stipulates that the "Contractor, in consultation with the District Attorney, shall redact or remove from the final report such confidential information and provide the City with a copy of the remaining information contained in the final report."

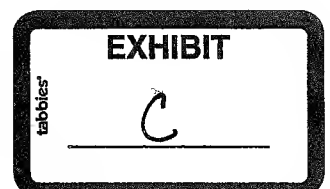
Per the terms of the contract everyone agreed to, the redacted version shall be made available. That looks pretty straightforward to me.

Other thoughts?

> On Wed, Jul 25, 2012 at 8:56 PM, Cecil Bothwell <cecil@braveulysses.com> wrote:

>

> Having dealt with redacted documents over many years as a journalist,
> my take is that requesting them simply consumes time for some redactor.



>

> I honestly don't believe we are in a position to make any useful
> judgments about 28,000 (or is it 38,000?) items carefully listed with
> various magic marker lines over parts of the report (or however they
> might redact digitally).

>

> My take-away is that we have been shown a systemic problem, not
> in any way unique to Asheville. The SBI will, presumably, move ahead on
> any evidence of criminal activity (though, don't hold your breath ...
> since there are still no indictments concerning the Medford evidence
> room issues from 2006 ... presumably in part due to a very similar
> situation).

>

> I think we need to do what we can to facilitate better
> accountability going forward, fund the (probably expensive)
> reconciliation of past records and stuff (really, we should pay Maggie

>

> whatever it costs to dive into those files ... that is, if we really
> want it done right), and reassure our citizens that we are doing
> everything possible to fix the problems.

>

> -c

>> On Jul 25, 2012, at 3:06 PM, Gordon Smith wrote:

>>

>> Mayor, Council, Mr. Jackson, Mr. Oast,

>>

>> Upon reviewing the contract with Blueline, I came upon the

>> clause in section A(15) that indicates a redacted copy of the audit is

>> required to be released to the City in the event the contents are

>> sensitive.

>>

>> It seems we are contractually entitled to receive the redacted

>> copy. Thoughts?

>>

>> Gordon

Date: Fri, 27 Jul 2012 10:14:19

Subject: Contract for Audit

From: Gordon Smith <gordonsmith@avlcouncil.com>

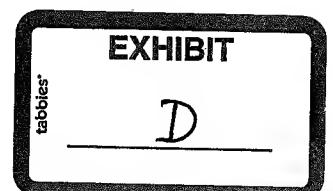
To: Bob Oast <boast@ashevillenc.gov>

I hope you're well. You may have seen that I'm interested in pursuing a redacted version of the evidence room audit report. It stipulates in the contract that the city signed with Blueline that we "shall" receive a redacted version if the entire report can't be released for some reason.

It seems to me that it's our responsibility to fulfill the terms of the contract.

Your thoughts?

Gordon



Date: Sat, 28 Jul 2012 14:46:43

Subject: RE: FW: Report

From: "Bob Oast" <boast@ashevillenc.gov>

To: "Gordon Smith" <gordonsmith@avlcouncil.com>

I plan to speak with Ron Moore about that as we respond to the lawsuit.

> From: Gordon Smith [mailto:gordonsmith@avlcouncil.com]

>

> Sent: Saturday, July 28, 2012 10:12 AM

>

> To: Bob Oast

>

> Subject: Re: FW: Report

>

> I'm looking at the terms of the contract and trying to determine how to
> comply with it. Perhaps the District Attorney could help us with that. I
> understand your points, however, having entered into a public contract
> with BlueLine that calls for the release of a redacted version in the
> event that the material is sensitive, it looks to me like we need to go
> ahead and help make that happen.

>

> Gordon

>> On Fri, Jul 27, 2012 at 6:03 PM, Bob Oast <boast@ashevillenc.gov> wrote:

>>

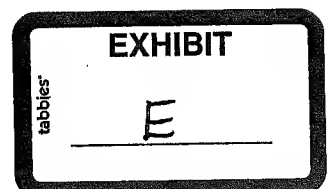
>> Dear Gordon:

>>

>> In response to your question about demanding a redacted version of the
>> audit report, Kelly Whitlock of my office remembered that the City
>> Manager had previously said something publicly in response to a similar
>> question. What he said is set out below.

>>

>> I think that the Manager's statement below reflects the fact that the
>> City, and especially the Police, realize the sensitivity of this matter
>> and that it is a matter of public concern, but that it is and ought to
>> be of primary concern to the District Attorney (also a public official)
>> for law enforcement purposes, and that we should cooperate with and
>> defer to the DA with respect to the release of the report, or parts of
>> it. In view of the Manager's previous statement, I would not want to do
>> or say anything without first consulting with him.



>>

>> As you know, the DA' s office and the City have both been named as
>> defendants in the lawsuit, and we are coordinating our defense. In
>> view of the nature of the lawsuit, and the relief sought, the issue is
>> certain to come up again.

>>

>> I am copying Gary for any additional comments he may have.

>>

>> Bob Oast

>>

>>

>> From: Dawa Hitch

>>

>> Sent: Friday, July 27, 2012 5:19 PM

>>

>> To: Bob Oast

>>

>> Subject: Report

>>

>> District Attorney Ron Moore has not delivered a copy to the city, or
>> responded to open records requests over the course of the last few
>> months for its public release. City manager Gary Jackson confirms the
>> city still hasn't received the report, but says he has no plans to press
>> for its delivery. Mountain Xpress 4/23/12

>>

>> Dawa Hitch

>> City of Asheville

>> Public Information Officer

>> Community Relations Division Head

>> 828.259.5981